

DAVID W. GREGG

IBLA 77-311

Decided September 28, 1977

Appeal from decision of the Utah State Office, Bureau of Land Management, denying petition for reinstatement of noncompetitive oil and gas lease U-26472 which terminated automatically by operation of law for failure to pay rental timely.

Affirmed.

1. Oil and Gas Leases: Reinstatement

A lessee generally has not demonstrated reasonable diligence where the rental payment was postmarked in California the day before it was due in Utah. An allegation that the payment was mailed prior to the postmark date must be corroborated by sufficient evidence. A suggestion that the rental check was mailed on the date written and allegations of poor services by the local post office are not sufficient alone to overcome the postmark date.

APPEARANCES: David W. Gregg, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

David W. Gregg appeals from the March 23, 1977, decision of the Utah State Office, Bureau of Land Management (BLM), denying his petition for reinstatement of noncompetitive oil and gas lease U-26472 which had terminated automatically by operation of law for failure to pay rental on or before the anniversary date, March 1, 1977. The rental payment was received by the State Office on March 2 and was postmarked February 28, 1976, in Mojave, California, although the check was dated February 23.

Appellant, in response to the Board's request for evidence corroborating his allegation of postal delay, states that mail service

in Lancaster, California, where he lives, is subject to delay. He alleges the reason for this is that mail deposited in the Lancaster Post Office is taken to Mojave, 30 miles away, for postmarking. Appellant filed a copy of his check book register recording several checks, including the rental payment, dated February 23. He states that he received no notice that his house payment, one of the checks recorded as February 23, arrived late. Appellant also filed a copy of an envelope sent to him which had been misdirected by the Postal Service.

[1] Any noncompetitive oil and gas lease on which there is no well capable of producing oil or gas in paying quantities terminates automatically by operation of law if annual rental is not paid on or before the anniversary date. 30 U.S.C. § 188(b) (1970). Congress has determined that such a terminated lease may be reinstated only if, among other requirements, the lessee shows that his failure was either justifiable or not due to a lack of reasonable diligence. 30 U.S.C. § 188(c) (1970). Appellant has not alleged any event outside his control which constituted a justifiable excuse for failure to pay the rental timely. Therefore, in order to obtain reinstatement of his lease, he must show that he exercised reasonable diligence in mailing the rental payment.

Reasonable diligence requires that the lessee show he deposited the rental payment in the mail sufficiently in advance of the due date to account for normal delays in the collection, transmittal, and delivery of the mail. 43 CFR 3108.2-1(c)(2). Generally, mailing a rental payment in California the day before it is due in Utah, as the postmark here indicates, does not show reasonable diligence. Adolph F. Muratori, 31 IBLA 39 (1977); Nevada Western Oil Co., 30 IBLA 379 (1977).

Ordinarily, the postmark on the rental payment envelope would be determinative of an appellant's reasonable diligence. However, where the appellant alleges that he deposited the payment in the mail earlier than the postmark date, corroborative evidence supporting the appellant's allegation will be considered to establish reasonable diligence. The Board has found reasonable diligence where a lapse of time occurred between the alleged date of mailing by the lessee and the actual postmark when the following evidence was submitted: statements by Postal Service officials explaining possible reasons for the date discrepancy and statement by lessee's employee regarding standard business practice, Elliot Davis, 26 IBLA 91 (1976); statement of lessee that he mailed prior to postmark date, statement of local postmaster that he received envelope at that time, statement of Postal Service official explaining possible reasons for discrepancy, Paul D. Beaird, Jr., 26 IBLA 79 (1976); statement by lessee and explanation by local postmaster, A. Helander, 25 IBLA 54 (1976); statements by lessee's employees that the payment was mailed prior to postmark and an example of a letter to lessee from BLM that was postmarked 9 days after date on letter, W. A. Fitzhugh (On Reconsideration), 18 IBLA 323 (1975).

Appellant has not provided sufficient corroboration supporting his allegation of an earlier deposit. While he wrote a series of checks dated February 23, 1977, he provides no indication when those checks were mailed and were received by the respective payees other than an inference regarding his house payment. He alleges poor postal service but provides no statements by Postal Service employees regarding possible reasons for delay in postmarking. Finally, he can provide no definite date of mailing. He states that he pays his bills from his office. We note that February 23, 1977, was a Wednesday and that February 28, 1977, was a Monday. Appellant was presumably at his office on both days and could have mailed the payment on either. He has not submitted any statement from an employee or anyone else concerning his check writing and mailing practices. In conclusion, appellant has not provided a plausible, substantiated alternative to the known fact of the February 28 postmark. Accordingly, we affirm the decision of the BLM State Office denying appellant's petition for reinstatement.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Edward W. Stuebing
Administrative Judge

